



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 230427-0115]

RIN 0648-BL89

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Resources of the Gulf of Mexico; Temporary Measures to Reduce Overfishing of Gag

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final temporary rule.

SUMMARY: This final temporary rule implements interim measures to reduce overfishing of gag in Federal waters of the Gulf of Mexico (Gulf). This final temporary rule reduces the 2023 commercial and recreational sector harvest levels for gag and changes the 2023 recreational fishing season for gag in Federal waters of the Gulf. This temporary rule is effective for 180 days, but NMFS may extend the interim measures for a maximum of an additional 186 days. The purpose of this temporary rule is to reduce overfishing of gag while the long-term management measures are developed.

DATES: This final temporary rule is effective from May 3, 2023, until October 30, 2023.

ADDRESSES: An electronic copy of the environmental assessment (EA) supporting these interim measures may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/interim-action-reduce-overfishing-gag-gulf-mexico>. The EA includes a regulatory impact review and a Regulatory Flexibility Act (RFA) analysis.

FOR FURTHER INFORMATION CONTACT: Dan Luers, NMFS Southeast Regional Office, telephone: 727-824-5305, or email: daniel.luers@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery in the Gulf is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) and includes gag and 30 other managed reef fish species. The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented by NMFS through regulations at 50 CFR part 622 under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On February 3, 2023, NMFS published a proposed temporary rule in the **Federal Register** and requested public comment (88 FR 7388). The proposed temporary rule and EA outline the rationale for the actions contained in this final temporary rule, and the EA is available from NMFS (see **ADDRESSES** section). A summary of the management

measures described in the EA and implemented by this temporary rule is provided below.

All weights described in this temporary rule are in gutted weight.

Gulf gag is harvested by the commercial and recreational sectors, with 39 percent of the total annual catch limit (ACL) allocated to the commercial sector and 61 percent allocated to the recreational sector. The gag stock was assessed in 2021 through the Southeast Data, Assessment, and Review (SEDAR) stock assessment process (SEDAR 72), and was determined to be overfished and undergoing overfishing. SEDAR 72 incorporated several modified data inputs from the previous gag stock assessment, including recreational catch and effort data generated by the Marine Recreational Information Program (MRIP) using the Fishing Effort Survey (FES; MRIP-FES). The MRIP-FES fully replaced the MRIP Coastal Household Telephone Survey (CHTS) in 2018. MRIP-FES generally estimates higher recreational effort, and thus higher recreational landings, than MRIP-CHTS. The recreational catch limits in this temporary rule are not directly comparable to the previous recreational catch limits because of the change from MRIP-CHTS to MRIP-FES to estimate recreational landings.

SEDAR 72 also accounted for observations of red tide mortality, since gag is vulnerable to red tide events and

was negatively affected by these disturbances in 2005, 2014, 2018, and projected for 2021 directly within the stock assessment model. Lastly, modeling changes were made in SEDAR 72 to better quantify commercial discards by taking into account the potential misidentification between black grouper and gag, which are similar looking species, and to improve size estimates of gag retained by commercial and for-hire fishermen, and private anglers.

In November 2021, the Council's Scientific and Statistical Committee (SSC) reviewed SEDAR 72 and found it to be the best scientific information available for informing fisheries management. On January 26, 2022, NMFS notified the Council that gag was overfished and undergoing overfishing, and that measures to rebuild the stock and end overfishing must be implemented within 2 years, *i.e.*, by January 26, 2024. In response, the Council began work on Amendment 56 to the FMP. However, because the management measures in Amendment 56 are not expected to be effective until the 2024 fishing year, the Council requested that NMFS implement interim measures to reduce overfishing of gag during the 2023 fishing year. Specifically, the Council requested that NMFS implement reduced catch levels for gag using the current sector allocations of the total ACL, and that NMFS move the start of the gag recreational fishing season.

Management Measures Contained in This Final Temporary Rule

During the effectiveness of this temporary rule, the total ACL for gag is 661,901 lb (300,233 kg). This temporary rule also specifies the commercial and recreational sector ACLs and component commercial quotas using the existing sector allocations of the total ACL of 39 percent commercial and 61 percent recreational. The commercial ACL and commercial quota are 258,000 lb (117,027 kg) and 199,000 lb (90,265 kg), respectively. The recreational ACL is 403,759 lb (183,142 kg), and the recreational annual catch target (ACT) is 362,374 lb (164,370 kg).

The reduced catch limits requested by the Council are based on a rebuilding time that is equal to twice the time necessary to rebuild the stock if fishing mortality was reduced to zero, which is one of the rebuilding times considered in Amendment 56.

Although the Council requested a commercial ACL of 258,142 lb (117,091 kg) and commercial quota of 199,157 lb (90,336 kg) for 2023, the analyses conducted by NMFS supporting the implementation of interim measures use a commercial ACL and quota rounded to the nearest thousand pounds, as noted above. NMFS used the rounded numbers because they are consistent with the numerical format of the current gag commercial catch limits and the Council did not consider whether this practice should be continued for the purpose of the interim commercial catch limits. NMFS

expects the Council to clearly articulate in Amendment 56 whether the commercial catch limits for gag should continue to be rounded to the nearest thousand pounds.

Because the commercial sector relies on the Individual Fishing Quota program for groupers and tilefishes (GT-IFQ program) that distributes commercial quota to shareholders for the entire fishing year, no change to the commercial fishing season would occur under this temporary rule. Further, the Council did not recommend interim modifications to the commercial sector's IFQ multi-use provision for gag and red grouper. Therefore, the gag and red grouper multi-use allocation will be available as specified in 50 CFR 622.22(a)(5).

In addition to the reduced gag catch limits, the Council requested that NMFS move the start of the gag recreational fishing season for the 2023 fishing year from June 1 to September 1. The Council also requested the season close on November 10, instead of remaining open through December 31, as it has in recent years. Therefore, the 2023 recreational fishing season will be open from September 1 through November 9, unless NMFS projects that the recreational ACL will be reached sooner and closes the recreational sector as required by the accountability measures (AM) specified in 50 CFR 622.41(r)(2).

The reduced recreational catch limits in this temporary rule will result in a shorter recreational

season. However, the Council and NMFS expect that the change to the recreational season will mitigate the lower catch limits and will maximize the number of recreational fishing days for gag. If the opening date for the recreational season had remained June 1, 2023, NMFS projected that recreational landings of gag would reach the recreational ACL in only 16 days.

NMFS would implement the current AM of an in-season closure earlier if NMFS projects that recreational landings will meet or exceed the recreational ACL before the November 10 closure date.

The temporary reductions in the allowable harvest of gag will result in reduced allowable harvest for both the commercial and recreational sectors and a reduced recreational fishing season. The reduced harvest levels and shortened recreational fishing season will likely result in short-term adverse socio-economic effects. However, the temporary ACLs, commercial quota, and recreational ACT are expected to minimize future adverse socio-economic effects by potentially decreasing further reductions in the allowable harvest levels required to end overfishing of gag through Amendment 56. The temporary harvest levels in this rule will also provide biological benefits to the gag stock by reducing the past levels of fishing mortality.

Comments and Responses

NMFS received 24 comments during the public comment period on the proposed temporary rule. Most of the comments NMFS received were opposed to the interim measures for gag. NMFS acknowledges the comments in favor of the action in the proposed rule and agrees with them. Some comments were outside the scope of the proposed temporary rule, suggesting NMFS implement alternative management measures or apply restrictions to a specific fishery sector or component, and those comments are not responded to in this final temporary rule. Comments that were opposed to or requested additional information about the actions contained in the proposed temporary rule are grouped as appropriate and summarized below, along with NMFS' responses.

Comment 1: The catch level reductions for gag are unnecessary because either the stock assessment is inaccurate or there is no shortage of gag in certain areas of the Gulf.

Response: NMFS disagrees that the reduction in the gag catch limits are unnecessary. The best scientific information available supports both the stock assessment results and the decision to reduce the catch limits through this temporary rule. The most recent stock assessment for Gulf gag (SEDAR 72) was completed in 2021 and determined that the stock is undergoing overfishing and is overfished. The assessment included a multi-day data review workshop

and several webinars, and was reviewed by the Council's SSC, which concluded that SEDAR 72 was based on the best scientific information available. Although NMFS recognizes that the abundance of gag varies across locations in the Gulf, gag is managed as a single stock in the Gulf, and the stock assessment, which used Gulf-wide data, concluded that the overall abundance has declined precipitously since the previous gag stock assessment was completed in 2016. This conclusion is supported by the inability of both the commercial and recreation sectors to harvest their allotted quotas of gag. In the last 5 years covered by SEDAR 72 (2015-2019), the combined commercial and recreational harvest only exceeded 50 percent of the gag stock ACL once (2016).

Comment 2: The recreational season for gag should be open from October through December because that is when gag move closer to shore.

Response: The Council recommended a recreational season opening on September 1 because public comments from stakeholders supported the longest season possible. The season starting September 1 is scheduled for a maximum of 70 days, closing on November 10, while the alternative start dates considered for the recreational season resulted in shorter season estimates. NMFS estimated that a June 1 start date would last only 16 days; an October 1 start date is estimated to last 55 days; and a November 1 start date

is estimated to last 29 days. Thus, even if an October 1 start date for the recreational season was implemented, NMFS projected the season would only last until late November. In addition, shorter seasons are more likely to result in "derby-like" fishing, where greater effort and greater numbers of fish are harvested in a shorter period, and fishermen may decide go out in more dangerous conditions.

Comment 3: NMFS should reduce the recreational bag limit from two fish to one fish instead of reducing the season length. Alternatively, NMFS should reduce bag limit to one fish and reduce the recreational season length.

Response: The Council did not consider an action to change the existing bag limit for gag, nor recommend that NMFS reduce the gag two-fish bag limit through this temporary rule. Additional analysis is necessary to determine the combined impacts of reducing the bag limit and shortening the open season. The Council has indicated that it may explore a bag limit reduction in the future, which would provide the opportunity to complete this additional analysis and evaluate whether a reduction in bag limit combined with the change to the open season would achieve the desired reduction in harvest.

Comment 4: Although the commercial quota and recreational ACT are decreased by 79 percent, the recreational season length in number of days is only

reduced by 61 percent. The percentage reduction in recreational fishing days should be the same as the reduction in the recreational ACT.

Response: This temporary rule shortens the recreational season for gag from 214 days (June 1 through December 31) to 70 days (September 1 through November 9), which is approximately a 67 percent reduction. In addition, consistent with the current accountability measures, this temporary rule limits recreational harvest to the recreational ACL also set in this rule, not the recreational ACT. The recreational ACL will be reduced from 1,903,000 lb (863,186 kg) to 403,759 lb (183,142 kg). However, as explained above, these catch limits are not directly comparable because of the change from MRIP-CHTS to MRIP-FES to estimate recreational landings. Further, NMFS would not expect the reduction in the ACL to directly correspond to the reduction in the season length because recreational fishing effort and catch rates for gag change during a fishing year, so the time of year when fishing occurs is important in projecting how quickly the catch limit will be reached. This temporary rule will change the start date for the gag recreational season from June 1 to September 1. Because the recreational harvest of gag in total pounds is historically much lower in September and October than in June, NMFS projects that it will take

longer to catch the decreased ACL than it would if the season were to open on June 1.

Comment 5: The proposed recreational season of September 1 through November 9 is problematic for three reasons. First, the catch rates of gag in June, July, and August are low and a recreational closure during this time will not have a significant reduction on recreational harvest. Second, gag are commonly caught while targeting red snapper and a closure for gag from June through August, when red snapper harvest is generally at its peak, will most likely cause a significant number of gag discards in deep water. Therefore, the gag season should be open concurrent with the red snapper season to reduce bycatch of gag during that time, and then close the gag season late in the year, such as, an open season from June 1 through September 30. Separating the fishing seasons for gag and red snapper seems more likely to maximize bycatch, not minimize it to the extent practicable as required by National Standard 9. Last, the recreational season of September 1 through November 9 will heavily favor commercial fishermen instead of recreational fishermen due to the less favorable weather conditions at that time of year.

Response: NMFS has determined that the change in the recreational open season implemented through this temporary rule will reduce gag bycatch and bycatch mortality, to the

maximum extent practicable, consistent with the requirements of National Standard 9. The Council considered multiple factors in recommending the preferred alternative for the start date of the gag recreational season, including the season length projections, economic concerns, especially associated with the for-hire sector, and the potential changes in bycatch. The Council determined that it is important to provide recreational fishermen and for-hire businesses the longest season possible to harvest the recreational ACL. A season starting September 1 (the longest projected season length of the alternatives considered) is scheduled to be open for 70 days, while a season beginning June 1 (the shortest projected season) is projected to last 16 days. Although gag catch rates, *i.e.*, catch per unit effort, may be lower during June through August, concurrent with most of the Gulf States recreational seasons for red snapper and with the Federal red snapper for-hire season, than in some months later in the year (*e.g.*, November), the total pounds of gag harvested during this season is higher than any other time in the year due to the higher number of anglers that harvest gag. This is because of the larger number of recreational fishermen targeting reef fish, and also likely due to relatively favorable fishing weather and the open red snapper season. In addition, a June 1 start date would have the greatest adverse economic effects on the for-hire

component because during the limited 16-day season fishermen on for-hire vessels would have to take single trips to harvest both red snapper and gag, instead of having a different season to schedule trips for the two species. Thus, a June 1 season is expected to result in a decreased number of trips and decreased revenue for the for-hire component.

With respect to bycatch, opening the recreational season on June 1 would require recreational fishermen to discard all gag caught after the short 16-day season concludes. Although the September 1 opening may result in discards during the few weeks that the season would have been open in early June, it is also expected to eliminate targeted harvest of gag from June 1 through August 31. Many experienced fishermen have explained during public meetings that gag can be avoided when targeting other species, including red snapper. Thus, although there are uncertainties with regard to the extent of bycatch given each of the season opening dates, NMFS expects the September 1 season opening to reduce gag mortality during the peak of the red snapper recreational season, reduce overall gag mortality, and also provide economic and social benefits to the recreational sector.

NMFS does not believe the recreational season in this temporary rule will favor commercial fishermen over recreational fishermen. Because there are separate

commercial and recreational catch limits, harvest by the commercial sector will not impact the recreational season. This longer recreational season will provide the greatest flexibility to recreational fishermen to avoid periods of poor weather and harvest gag, compared to the other shorter seasons that the Council considered. Further, in at least some areas, gag move closer to shore in the fall as the water cools, which may allow for safer access by anglers when compared to areas farther offshore where gag occur in the summer. The cooler, shallower water may also reduce release mortality for those gag that are caught but cannot be kept.

Comment 6: The initial regulatory flexibility analysis (IRFA) for the proposed temporary rule is faulty because it does not account for effects on commercial crew members.

Response: Analyses conducted to satisfy the requirements of the RFA only consider the effects of a rule on entities subject to the regulation (*i.e.*, entities to which the rule will directly apply) rather than entities indirectly affected by the regulation. Because the commercial quota for gag is allocated to businesses that possess shares for gag in the GT-IFQ program, crew members on commercial fishing vessels who do not also possess such shares would be indirectly rather than directly affected by the temporary rule. Therefore, consideration of effects on

individual crew members is outside the scope of the IRFA analysis.

Comment 7: The temporary rule will adversely affect consumers who purchase gag by raising prices or they will not be able to purchase the fish.

Response: NMFS agrees that the reduction in the commercial quota proposed by this temporary rule would be expected to temporarily increase the ex-vessel price of gag, which would likely be passed on to consumers and result in a decrease in consumer surplus, *i.e.*, economic value to consumers. Specifically, Table 4.1.3.2 in the environmental assessment indicates that the ex-vessel price of gag is expected to increase by \$1.44 per lb, which in turn is expected to reduce consumer surplus by \$497,585, over the maximum effective period of the temporary rule, 366 days. These economic losses for consumers cannot be avoided because NMFS has determined that the commercial quota reduction in this temporary rule is necessary to reduce overfishing of gag while a rebuilding plan is being developed.

Comment 8: The gag commercial quota reduction will cause extreme hardship to commercial fishermen and their families, their communities, and the seafood supply chain, and could have been avoided or at least mitigated had the Council and NMFS acted sooner. The reduction in the recreational catch limits will cause for-hire vessels to go

out of businesses or greatly affect their ability to make a living, and may cause effort to shift to other species.

Response: NMFS recognizes that the temporary rule may cause economic hardships for commercial and recreational for-hire stakeholders and communities reliant on gag. However, not reducing harvest would be expected to result in further declines to the gag population and greater economic hardships in the longer term. Regarding the timeliness of this action, the Council and NMFS use the SEDAR process to assess the abundance and health of populations of several managed stocks. The gag stock has been assessed frequently since 2006, with some assessments indicating the population was overfished and overfishing was occurring, and other assessments indicating the population was healthy. Prior to SEDAR 72, the next most recent stock assessment (SEDAR 33 Update, 2016) indicated the gag population was healthy. Thus, the Council and NMFS did not have sufficient information to support reducing catch levels prior to the Council receiving the results of SEDAR 72 at its September 2021 meeting. Stock assessments take several years to complete, so the data from the stock assessment may be several years old before a final rule can be implemented, and thus a population status may change before the Council and NMFS receive the results.

Comment 9: The temporary rule is unlikely to achieve its purpose due to unconstrained and inaccurate estimates

of recreational discards. The temporary rule does not adequately track or account for dead discards of gag by the recreational sector. It is unclear if NMFS' analysis takes into account the potential for increased directed fishing for gag during the new open fishing season, which could increase catch rates beyond what was historically observed during that period of time and thus fail to control overall fishing mortality. The analysis concludes that overall gag mortality is expected to decrease, but the basis for that conclusion is not explained. It does not appear that the temporary rule or the accompanying analysis quantifies the numbers of gag expected to be caught and discarded dead as bycatch by recreational anglers during the closed or open seasons, or the potential for increased directed fishing pressure during the proposed 70-day fishing season. Without those figures, the public has no way to assess the actual impact on "overall gag mortality."

Response: The purpose of this temporary rule is to reduce overfishing of gag during the 2023 fishing year while the Council and NMFS work to implement permanent measures to end overfishing and rebuild the stock. As explained in the response to *Comment 5*, NMFS recognizes that shifting the recreational season may change fishing pressure during the fall months and the magnitude of gag discards during the red snapper season. However, NMFS does not agree that it is necessary to quantify expected

discards to conclude that the reduction in the commercial and recreational catch limits will achieve the purpose of reducing overfishing during this interim period. As explained in the environmental assessment supporting this rule, the average total gag commercial and recreational landings between 2017 and 2021 was over 3 million lb (1,360,777 kg). This temporary rule is expected to constrain total harvest in 2023 to 661,901 lb (300,233 kg) and, therefore, regardless of any uncertainty related discard mortality, reduce overfishing compared to the status quo catch limits and recent landings. Further, the Council considered uncertainty in the catch rates when recommending the September 1 to November 10 recreational season. This 70-day season is more conservative than NMFS' current estimate for the season length based on previous years of fishing effort during September through December, which suggests that it would take 80 to 96 days to harvest the revised gag recreational ACL. The shorter 70-day season accounts for changes in effort that may occur due to the new season timeframe, and provide a buffer in case recreational landings are higher than estimated. Also, NMFS will use all available data, including final 2022 recreational data, which are not yet available, to determine whether the season should be reduced further. If the data indicate a recreational closure for gag is

necessary to avoid exceeding its recreational ACL prior to November 10, NMFS will close the season.

Comment 10: The voluntary data collection from private recreational anglers that occurs through MRIP-FES is delayed by months after landings occur and before they are available for use by management. NMFS does not explain how it will obtain sufficient information from the recreational sector about what is caught during the proposed open season in time to actually shorten that season.

Response: NMFS will use the best data available to project the duration of the recreational season. The recreational season implemented by this final temporary rule will be a maximum of 70 days and is based on a conservative estimate that is expected to result in landings less than the new recreational ACL for gag. NMFS will continue to run projections that include newly available recreational landings, such as the final 2022 recreational landings of gag, which are not included in the current projection. If the updated projections indicate that recreational landings will reach the recreational ACL before November 10, NMFS will shorten the season.

Future Action

NMFS has determined that this temporary rule is necessary to reduce overfishing of gag. NMFS considered all public comments received within the scope of the proposed temporary rule in the determination of whether to proceed

with a final temporary rule and whether any revisions to the final temporary rule were appropriate. This final temporary rule is effective for 180 days after the date of publication in the **Federal Register**, as authorized by section 305(c) of the Magnuson-Stevens Act. The temporary rule could be extended for up to an additional 186 days if NMFS publishes a temporary rule extension in the **Federal Register**, because the public has had an opportunity to comment on the proposed temporary rule, and the Council is actively preparing an FMP amendment to address overfishing on a permanent basis.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The NMFS Assistant Administrator has determined that this temporary rule is consistent with the Magnuson-Stevens Act and other applicable law.

This temporary rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the legal basis for this temporary rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting and record-keeping requirements are introduced by this temporary rule. This temporary rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

NMFS prepared a final regulatory flexibility analysis (FRFA) for this temporary rule. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. NMFS' responses to public comments regarding the IRFA and the Executive Order 12866 analysis are in the **SUPPLEMENTARY INFORMATION** section of the preamble under the Comments and Responses heading. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

The objective of this temporary rule is to use the best scientific information available to reduce overfishing of gag while a rebuilding plan is developed, consistent with the authority under the Magnuson-Stevens Act. All monetary estimates in the following analysis are in 2019 dollars.

This temporary rule will revise the stock ACL, sector ACLs, commercial quota, and recreational ACT for gag based on the "TMin*2" rebuilding scenario, which is twice the minimum time for the stock to rebuild with zero fishing mortality and is an alternative under consideration in Amendment 56. This temporary rule retains the existing sector allocations of the stock ACL of 39 percent to the commercial sector and 61 percent to the recreational sector, but will reduce the stock ACL, commercial ACL,

recreational ACL, commercial quota and recreational ACT to 661,901 lb (300,233 kg), 258,000 lb (117,027 kg), 403,759 lb (183,142 kg), 199,000 lb (90,265 kg), and 362,374 lb (164,370 kg), respectively. The recreational portion of the revised stock ACL, the recreational ACL, and the recreational ACT are based on MRIP-FES data. This temporary rule will also change the recreational season start date from June 1 to September 1, and close the season on November 10 unless NMFS projects the recreational ACL to be met sooner. As a result, this temporary rule is expected to regulate commercial fishing businesses that possess shares of gag in the GT-IFQ program and for-hire fishing businesses that target gag.

The gag commercial quota is allocated annually based on the percentage of gag shares in each IFQ account. For example, if an account possesses 1 percent of the gag shares and the commercial quota is 1 million lb (0.45 million kg), then that account would receive 10,000 lb (4,536 kg) of commercial gag quota. Although it is common for a single IFQ account with gag shares to be held by a single business, some businesses have multiple IFQ accounts with gag shares. As of July 8, 2021, 506 IFQ accounts held gag shares. These accounts and gag shares were owned by 455 businesses. Thus, NMFS assumes this temporary rule would regulate 455 commercial fishing businesses.

A valid charter vessel/headboat permit for Gulf reef fish is required to legally harvest gag on a recreational for-hire fishing trip. NMFS does not possess complete ownership data regarding businesses that hold a charter vessel/headboat permit for Gulf reef fish, and thus potentially harvest gag. Therefore, it is not currently feasible to accurately determine affiliations between vessels and the businesses that own them. As a result, for purposes of this analysis, NMFS assumes each for-hire vessel is independently owned by a single business, which NMFS expects to result in an overestimate of the actual number of for-hire fishing businesses regulated by this temporary rule.

NMFS also does not have data indicating how many for-hire vessels actually harvest gag in a given year. However, in 2020, there were 1,289 vessels with valid charter vessel/headboat permits for Gulf reef fish. Further, gag is only targeted and almost entirely harvested in waters off the west coast of Florida. Of the 1,289 federally permitted vessels, 803 were homeported in Florida. Of these permitted vessels, 62 are primarily used for commercial fishing rather than for-hire fishing purposes, and thus are not considered for-hire fishing businesses. In addition, 46 of these permitted vessels are considered headboats, which are considered for-hire fishing businesses. However, headboats take a relatively large, diverse set of anglers to harvest

a diverse range of species on a trip, and therefore do not typically target a particular species exclusively.

Therefore, NMFS assumes that no headboat trips would be canceled, and thus no headboats would be directly affected as a result of this regulatory action. However, charter vessels often target gag. Of the 803 vessels with a valid charter vessel/headboat permit for Gulf reef fish that are homeported in Florida, 695 vessels are charter vessels. A recent study reported that 76 percent of charter vessels with a valid charter vessel/headboat permit in the Gulf were active in 2017, *i.e.*, 24 percent were not fishing. A charter vessel would only be directly affected by this temporary rule if it used to go fishing. Given this information, NMFS' best estimate of the number of charter vessels that are likely to harvest gag in a given year is 528, and thus this temporary rule is estimated to regulate 528 for-hire fishing businesses.

For RFA purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (50 CFR 200.2). A business primarily involved in the commercial fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts (revenue) are not in excess of \$11 million for all of its affiliated

operations worldwide. NMFS does not collect revenue data specific to commercial fishing businesses that have IFQ accounts; rather, revenue data are collected for commercial fishing vessels in general. It is not possible to assign revenues earned by commercial fishing vessels back to specific IFQ accounts and the businesses that possess them because quota is often transferred across many IFQ accounts before it is used by the business on a vessel for harvesting purposes, and specific units of quota cannot be tracked. However, from 2016 through 2020, the maximum annual gross revenue earned by a single vessel during this time was about \$1.73 million in 2016. The average gross revenue per vessel was about \$108,000 in that year. By 2020, the maximum and average gross revenue per vessel had decreased to about \$730,000 and \$79,700, respectively. Based on this information, all commercial fishing businesses regulated by this temporary rule are determined to be small entities for the purpose of this analysis.

For other industries, the Small Business Administration has established size standards for all major industry sectors in the U.S., including for-hire businesses (North American Industry Classification System code 487210). A business primarily involved in for-hire fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has annual

receipts (revenue) not in excess of \$12.5 million for all its affiliated operations worldwide. The maximum annual gross revenue for a single headboat in the Gulf was about \$1.38 million in 2017. On average, annual gross revenue for headboats in the Gulf is about three times greater than annual gross revenue for charter vessels, reflecting the fact that businesses that own charter vessels are typically smaller than businesses that own headboats. Based on this information, all for-hire fishing businesses regulated by this temporary rule are determined to be small businesses for the purpose of this analysis.

If implemented, NMFS expects this temporary rule to regulate 455 of the 536 businesses with IFQ accounts, or approximately 85 percent of those commercial fishing businesses. Further, NMFS expects this temporary rule would regulate 528 of the 1,227 for-hire fishing businesses with valid charter vessel/headboat permits for Gulf reef fish, or approximately 43 percent of those for-hire fishing businesses. NMFS has determined that, for the purpose of this analysis, all regulated commercial and for-hire fishing businesses are small entities. Based on this information, NMFS expects the temporary rule to affect a substantial number of small entities.

Because revenue and cost data are not collected for the commercial fishing businesses that are expected to be regulated by this temporary rule, direct estimates of their

economic profits are not available. However, economic theory suggests that annual allocation (quota) prices should reflect expected annual economic profits, which allows economic profits to be estimated indirectly.

Further, the 455 businesses with gag shares also own shares in the other IFQ share categories and thus are expected to earn profits from their ownership of these shares as well, *i.e.*, red snapper, red grouper, shallow-water grouper, deep-water grouper, and tilefish.

However, economic profits will only be realized if the allocated quota is used for harvesting purposes. For example, practically all of the commercial red snapper quota has been used for harvesting in recent years, and so NMFS assumes that all of that quota will be harvested in the foreseeable future. Important management changes have occurred for red grouper, which partly resulted in 96 percent of the commercial quota being harvested in 2021. Thus, this analysis also assumes that all of the red grouper quota will be harvested in the future as well. However, based on 2017-2021 data, only 82 percent of the deep-water grouper quota, 38 percent of the shallow-water grouper quota, and 73 percent of the tilefish quota have been harvested, and that is expected to continue in the foreseeable future. For gag, the quota utilization rate from 2017-2021 was approximately 52 percent. Given these quota utilization rates in combination with average annual

allocation prices from 2017-2021 and annual commercial quotas in 2021, the total expected economic profits for businesses with gag shares are estimated to be at least \$29.4 million at the present time. This estimate does not account for any economic profits that may accrue to businesses with gag shares that also own commercial fishing vessels that harvest non-IFQ species. Such profits are likely to be small because harvest of IFQ species accounts for around 84 percent of commercial IFQ vessels' annual revenue and economic profits from the harvest of non-IFQ species tend to be smaller than those from IFQ species. Given that there are 455 businesses with gag shares, the average annual expected economic profit per commercial fishing business is at least \$64,620.

However, most of these economic profits (82 percent) are the result of owning red snapper shares. Only approximately \$502,930 (or 1.7 percent) of their expected economic profits is due to the ownership of gag shares. This temporary rule is only expected to affect economic profits from the ownership of gag shares, specifically because of the action that reduces the gag commercial ACL from 1.217 million lb (0.552 million kg) to 258,000 lb (117,027 kg) and the gag commercial quota from 939,000 lb (426,000 kg) to 199,000 lb (90,265 kg). Average annual commercial landings of gag from 2017-2021 were 492,401 lb (223,349 kg). Because average annual landings exceed the

commercial quota, NMFS assumes all of the commercial quota will be harvested in the future. Further, the expected reduction in annual commercial landings is 293,401 lb (133,084 kg). The reduction in commercial landings is expected to increase the average ex-vessel price of gag from \$6.10 per lb to \$7.54 per lb, thereby partially offsetting the adverse effects of the expected landings reduction. Thus, the expected reduction in annual ex-vessel revenue for gag is approximately \$1.5 million, over the maximum effective period of the temporary rule, 366 days. Given an average annual allocation price of \$1.03 per lb for gag from 2017-2021, the expected reduction in commercial landings of gag is expected to reduce economic profits to these commercial fishing businesses by about \$302,200, or by approximately \$660 per commercial fishing business. Thus, economic profit is expected to be reduced by no more than 1 percent on average per commercial fishing business.

Based on the most recent information available, average annual profit is \$27,948 per charter vessel. The action that revises the stock ACL changes the gag recreational ACL from 1.903 million lb (0.86 million kg) in MRIP-CHTS units to 403,759 lb (183,142 kg) in MRIP-FES units. The terms "MRIP-CHTS units" and "MRIP-FES units" signify that although the current and recreational ACLs are expressed in pounds, they are in different scales and not

directly comparable. However, average recreational landings from 2017-2021 were approximately 2.538 million lb (1.151 million kg) in MRIP-FES units. Given that average recreational landings have been considerably greater than the recreational ACL, all of the recreational ACL is expected to be harvested in the future. The recreational ACL reduction would be expected to reduce the recreational season length from 214 days to 16 days, which in turn is expected to reduce the number of trips targeting gag on charter vessels by 26,542 angler trips. Net Cash Flow per Angler Trip (CFpA) is the best available estimate of economic profit per angler trip by charter vessels. CFpA on charter vessels is estimated to be \$149 per angler trip. Thus, NMFS expects the estimated reduction in charter vessel economic profits from this action to be \$3.955 million. The reduction in charter vessel economic profits is estimated to be \$7,490 per vessel, or almost 27 percent on average per for-hire fishing business.

The action that changes the recreational season would increase the number of target trips for gag by charter vessels during this period over the number of target trips in previous years by 2,159 trips, thereby partially mitigating the reduction in target trips due to the recreational ACL reduction. Assuming the CFpA on charter vessels is \$149 per angler trip, this action is expected to increase economic profits for charter vessels by \$321,733,

or by \$609 per charter vessel. Thus, economic profits are expected to be increased by around 2.2 percent on average per for-hire fishing business.

Based on the above, the total reduction in economic profits for charter vessels from this temporary rule is expected to be about \$3.634 million, or approximately \$6,882 per charter vessel. Thus, economic profits are expected to be reduced by approximately 24.6 percent on average per for-hire fishing business.

Three alternatives, including the status quo, were considered for the action to revise the gag stock ACL, commercial ACL, recreational ACL, commercial quota, and recreational ACT of 3.12 million lb (1.415 million kg), 1.217 million lb (0.552 million kg), 1.903 million lb (0.863 million kg), 939,000 lb (426,000 kg), and 1.708 million lb (0.775 million kg) based on MRIP-CHTS data. The action in this temporary rule will revise the same catch levels for gag to 661,901 lb (300,233 kg), 258,000 lb (117,027 kg), 403,759 lb (183,142 kg), 199,000 lb (90,265 kg), and 362,374 lb (164,370 kg), respectively, based on the TMin*2 rebuilding scenario and MRIP-FES data. Similar to the action in this temporary rule, the status quo alternative would have retained the current allocation of the stock ACL of 39 percent to the commercial sector and 61 percent to the recreational sector. But, it also would have maintained current the stock ACL, commercial ACL,

recreational ACL, commercial quota, and recreational ACT stated earlier based on MRIP-CHTS data. The status quo alternative was not selected because it would not reduce overfishing of gag while a rebuilding plan is being developed, contrary to the purpose of this temporary rule.

A second alternative would have decreased the allocation percentage of the gag stock ACL to the commercial sector from 39 percent to 20.5 percent and increased the allocation percentage to the recreational sector from 61 percent to 79.5 percent. Further, based on the TMin*2 rebuilding scenario and MRIP-FES data, this alternative would have revised the gag stock ACL, commercial ACL, recreational ACL, commercial quota, and recreational ACT from 3.12 million lb (1.415 million kg), 1.217 million lb (0.552 million kg), 1.903 million lb (0.863 million kg), 939,000 lb (426,000 kg), and 1.708 million lb (0.775 million kg) based on MRIP-CHTS data to 611,578 lb (277,407 kg), 125,000 lb (56,699 kg), 486,204 lb (220,538 kg), 98,000 lb (44,452 kg), and 436,368 lb (197,933 kg). This alternative would have reduced overfishing while a rebuilding plan is being developed. However, because this temporary rule and an extension cannot in combination be in effect for more than 366 days, this alternative was not selected because the Council advised NMFS that it would prefer to address sector

allocations for gag on a longer-term basis through an amendment to the FMP.

A third alternative would have decreased the allocation percentage of the gag stock ACL to the commercial sector from 39 percent to 18 percent and increased the allocation percentage to the recreational sector from 61 percent to 82 percent. Further, based on the TMin*2 rebuilding scenario and MRIP-FES data, this alternative would have revised the gag stock ACL, commercial ACL, recreational ACL, commercial quota and recreational ACT from 3.12 million lb (1.42 million kg), 1.217 million lb (0.55 million kg), 1.903 million lb (0.86 million kg), 939,000 lb (426,000 kg), and 1.708 million lb (0.78 million kg) based on MRIP-CHTS data to 605,165 lb (274,745 kg), 109,000 lb (49,486 kg), 496,235 lb (225,291 kg), 84,000 lb (38,136 kg), and 445,370 lb (202,198 kg). Similar to the second alternative, this alternative would have reduced overfishing while a rebuilding plan is being developed. However, because this temporary rule and an extension cannot be in effect for more than 366 days, this alternative was not selected because the Council advised NMFS that it would prefer to address sector allocations for gag on a longer-term basis through an amendment to the FMP.

Three alternatives, including the status quo, were considered for the action to change the recreational start date from June 1 to September 1, and close the season on

November 10, unless NMFS projects the recreational ACL will be met sooner. The status quo alternative would have maintained the recreational season start date of June 1, which was expected to result in a recreational season length of only 16 days compared to 70 days under the action in this temporary rule. This alternative was not selected as it would not mitigate the adverse effects from the recreational ACL reduction and thereby would have resulted in greater adverse effects on small for-hire fishing businesses.

The second alternative would have changed the recreational season start date from June 1 to October 1, which would have resulted in a recreational season length of 55 days compared to 70 days under the action in this temporary rule. Although the second alternative would have mitigated some of the adverse effects from the recreational ACL reduction, this alternative was not selected because, given the shorter season length compared to the action, it would not allow for-hire fishing businesses as much flexibility in planning target trips for gag, which is particularly desirable during hurricane season, which occurs from June 1 through November 30 each year. Further, unlike the action in this temporary rule, this alternative does not have a fixed closure date, which would increase the probability of exceeding the recreational ACL relative to the action in this temporary rule.

The third alternative would have changed the recreational season start date from June 1 to November 1, which would have resulted in a recreational season length of 29 days compared to 70 days under the action in this temporary rule. Although the third alternative would have mitigated some of the adverse effects from the recreational ACL reduction, this alternative was not selected because it would not have mitigated those adverse effects as much as the action, thereby causing relatively greater adverse effects on small for-hire fishing businesses. Further, given the shorter season length compared to the action in this temporary rule, it would not allow for-hire fishing businesses as much flexibility in planning target trips for gag, which is particularly desirable during hurricane season. Also, similar to the second alternative, this alternative does not have a fixed closure date, which would increase the probability of exceeding the recreational ACL relative to the action in this temporary rule.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or

group of rules. As part of this rulemaking process, NMFS prepared a fishery bulletin that also serves as the small entity compliance guide. NMFS will send the fishery bulletin to all interested parties. A copy of this final temporary rule is available from NMFS (see **ADDRESSES**), and the small entity compliance guide is available on the NMFS website at <https://www.fisheries.noaa.gov/rules-and-announcements/bulletins>.

There is good cause under authority contained in 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness so that this final temporary rule can be effective by June 1, 2023. On December 13, 2022, NMFS published a temporary rule to withhold a portion of the commercial allocation of gag for the 2023 fishing year in anticipation of the reduction in the commercial quota in this final temporary rule (87 FR 76125). If this final temporary rule is not effective by June 1, 2023, the regulations at 50 CFR 622.22(a)(4) require NMFS to distribute the previously withheld commercial allocation, which would be contrary to the purpose of this rule to reduce overfishing for the 2023 fishing year. In addition, the current recreational fishing season opens on June 1. Therefore, this final temporary rule must be effective by that date to constrain recreational harvest to the reduced recreational catch limit while providing the maximum number of fishing days. NMFS was unable to publish this final temporary rule sooner

because NMFS determined that it was important to solicit public comments on the interim measures, which substantially reduce the allowable harvest of gag for the 2023 fishing year, and it took time to complete the analyses supporting the proposed temporary rule and to respond to the comments received.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gag, Gulf of Mexico.

Dated: April 27, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory

Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 622 as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.34:

a. Suspend paragraph (e); and

b. Add paragraph (i).

The addition reads as follows:

§ 622.34 Seasonal and area closures designed to protect Gulf reef fish.

* * * * *

(i) *Seasonal closure of the recreational sector for gag.* The recreational harvest of gag in or from the Gulf EEZ is closed from January 1 through August 31 and from November 10 through December 31. During the closure, the bag and possession limits for gag harvested in or from the Gulf EEZ are zero.

3. In § 622.39:

a. Suspend paragraph (a)(1)(iii)(B); and

b. Add paragraph (a)(1)(iii)(D).

The addition reads as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(iii) * * *

(D) *Gag.* Shallow-water groupers (SWG) have a separate quota for gag, among the other species described in the introductory text of paragraph (a)(1)(iii) of this section, and as specified in this paragraph (a)(1)(iii)(D). This quota is specified in gutted weight, that is, eviscerated

but otherwise whole. The commercial quota for gag is 199,000 lb (90,265 kg).

* * * * *

4. In § 622.41:

- a. Suspend paragraph (d); and
- b. Add paragraph (r).

The addition reads as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(r) *Gag*—(1) *Commercial sector*. The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial gag. The commercial ACL in gutted weight is 258,000 lb (117,027 kg).

(2) *Recreational sector*. (i) Without regard to overfished status, if gag recreational landings, as estimated by the SRD, reach or are projected to reach the applicable ACLs specified in paragraph (r)(2)(iv) of this section, the AA will file a notification with the Office of the Federal Register, to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limits of gag in or from the Gulf EEZ are zero. These bag and possession limits apply in the Gulf on a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard

to where such species were harvested, *i.e.*, in State or Federal waters.

(ii) Without regard to overfished status, and in addition to the measures specified in paragraph (r)(2)(i) of this section, if gag recreational landings, as estimated by the SRD, exceed the applicable ACLs specified in paragraph (r)(2)(iv) of this section, the AA will file a notification with the Office of the Federal Register to maintain the gag ACT, specified in paragraph (r)(2)(iv) of this section, for that following fishing year at the level of the prior year's ACT, unless the best scientific information available determines that maintaining the prior year's ACT is unnecessary. In addition, the notification will reduce the length of the recreational gag fishing season the following fishing year by the amount necessary to ensure gag recreational landings do not exceed the recreational ACT in the following fishing year.

(iii) If gag are overfished, based on the most recent status of U.S. Fisheries Report to Congress, and gag recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (r)(2)(iv) of this section, the following measures will apply. In addition to the measures specified in paragraphs (r)(2)(i) and (ii) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that

following year by the amount of the ACL overage in the prior fishing year, and reduce the ACT, as determined in paragraph (r)(2)(ii) of this section, by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(iv) The recreational ACL in gutted weight is 403,759 lb (183,142 kg). The recreational ACT in gutted weight is 362,374 lb (164,370 kg).

[FR Doc. 2023-09336 Filed: 5/2/2023 8:45 am; Publication Date: 5/3/2023]